7447

August 3, 1989

BY OVERNIGHT DELIVERY

Michael Berman, Esq.
U.S. Environmental Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

BY OVERNIGHT DELIVERY

Steven Willey, Esq.
United States Department of Justice
Environmental Enforcement Section
Lands and Natural Resources Division
10th St. and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Fields Brook Superfund Site
Ashtabula, Ohio

Dear Counsellors:

On July 21, 1989, the undersigned companies, RMI Company, Gulf + Western Inc., Detrex Corporation, Centerior Energy Corporation, and Occidental Chemical Corporation (successor to Hooker Electrochemical Corporation and Diamond Shamrock Chemical Company) (hereafter "the Settling Companies") collectively responded to the United States Environmental Protection Agency's ("U.S. EPA") letter dated June 20, 1989 demanding payment of $969,282.49, allegedly for response costs incurred by U.S. EPA in connection with the Fields Brook Site.

Our letter of July 21, 1989 stressed, as had the direct discussions with the federal government which preceded the letter, the sound policy objective of encouraging greater participation in settlement, while preserving the federal government's right to seek full recovery of its past response costs. The Settling Companies' letter included as attachments two draft tolling arrangements to achieve that objective, including one patterned after the tolling agreement offered by the United States Department of Justice ("U.S. DOJ") to settlers at the Yellow Water Road Superfund Site in Baldwin, Florida.

As you know, one concept which the Settling Companies have suggested, for use singly or in combination with other concepts, is a focused demand which seeks recovery of past costs from non-settlers, while preserving the federal government's option of later seeking reimbursement from settlers. The purpose of this letter is to transmit for your review and consideration a demand letter implementing that objective which U.S. EPA recently issued only to non-settlers at the Scientific Chemical Processing Site in Newark, New Jersey.

As at the Fields Brook Site, a group of potentially responsible parties ("PRPs") at the Scientific Chemical Processing Site has stepped forward and incurred response costs as part of a privately-financed response action, while another group of PRPs has ignored U.S. EPA's administrative orders and thereby avoided the incurrence of substantial response costs. As a consequence, on July 11, 1989, U.S. EPA issued the attached demand letter, seeking reimbursement of $202,400 in past costs, only to the members of the non-settling group of PRPs.

Thus, the Scientific Chemical Processing demand letter indicates that U.S. EPA has, in an analogous situation, sought reimbursement for past costs from non-settlers only. A consistent approach is warranted at Fields Brook.

As the federal government is aware, the Settling Companies are well underway in the performance of $5.5 million to $7.0 million of RD and RI/FS work required by U.S. EPA's unilateral administrative order of March 22, 1989 ("the § 106 Order"). Furthermore, the Settling Companies have incurred approximately $1,000,000 in past costs to keep the settlement process alive, including costs for negotiations and factual investigation. Because the Settling Companies have incurred -- and continue to incur -- these substantial costs in pursuit of settlement, while non-settling PRPs enjoy a "free ride," U.S. EPA should seek recovery of its past costs first from those Field Brook PRPs who stand in knowing violation of the § 106 Order. U.S. EPA has taken this approach at the Scientific Chemicals Processing Site and should do so at Fields Brook. As outlined in our letter of July 21, there are several different ways in which the federal government could address past costs in a manner which would begin to reverse the economic benefit which non-settlers have enjoyed at Fields Brook.

The Settling Companies are submitting this letter and its attachment as a supplement to their letter of July 21, 1989. We look forward to further discussions with you concerning the concepts addressed herein, and other resolutions of the matter of past costs.

Sincerely,

William W. Falsgraf /JR
William W. Falsgraf
Counsel for RMI Company

Michael A. Cyphert /JR
Michael A. Cyphert
Counsel for Gulf + Western Inc.

Robert A. Emmett /JR
Robert A. Emmett
Counsel for Detrex Corporation

Elizabeth A. Tulman /JR
Elizabeth A. Tulman
Counsel for Occidental Chemical Corporation

David Whitehead /JR
David Whitehead
Counsel for Centerior Energy Corporation

cc: Mr. John Kelley
Arthur I. Harris, Esq.
Mr. Allen Wojtas
Mr. Victor Hyatt

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING

NEW YORK, NEW YORK 10278

JUL 11 1988

CERTIFIED MAIL--
RETURN RECEIPT REQUESTED

Re: EPA Demand for Costs Incurred Relating to the Scientific Chemical Processing Site,
Newark, Essex County, New Jersey

Dear Sir or Madam:

It is the purpose of this letter to seek reimbursement from you and/or your corporation for the costs the United States Environmental Protection Agency ("EPA") has incurred relating to the Scientific Chemical Processing ("SCP") Site located in Newark, New Jersey.

As you are aware, EPA informed the individuals and corporations on the attached list ("Recipients of Notice Letters"), except for Cassidy Chemical Company, Inc., Environmental Waste Resources and Seton Company, by letters dated either February 12, 1985, March 15, 1985 or November 25, 1985, that EPA had documented the release(s) and threatened release(s) of hazardous substances at the SCP Site in Newark, New Jersey. In those letters, EPA informed these recipients of notice letters that it considered them to be potentially responsible parties.

EPA also issued and transmitted administrative orders on consent ("ACO") and/or unilateral orders ("UO") under Section 106 of CERCLA, which required the individuals and corporations on the attached list to conduct response actions at the SCP Site in Newark, New Jersey.

EPA considers the individuals and corporations on the attached list, except for Cassidy Chemical Company, Inc., Environmental Waste Resources and Seton Company, to be out of compliance with the ACO and UO. However, EPA considers the individuals and corporations on the attached list to be jointly and severally liable for all response costs incurred by EPA at the site (Refer to Section 107(a) of CERCLA, 42 U.S.C. §9601 et. seq.). These

costs may include all costs associated with any planning, investigation(s), removal(s) and remedial actions and any enforcement costs incurred by the EPA relating to the SCP Site.

EPA has expended at least $202,400 (two hundred and two thousand and four hundred dollars) to date in response costs related to the above-referenced orders at the SCP Site in Newark, New Jersey.

This letter, therefore, constitutes official notification to the individuals and corporations on the attached list that EPA is hereby demanding payment in full from one or any combination of individuals and/or corporations on the attached list for all of the response costs noted above.

Payment of these costs must be in full in the form of a cashier's or certified cheque made payable to the "EPA Hazardous Substances Trust Fund" and must be received at the following address prior to 5:00 p.m., August 11, 1988:

EPA - Superfund
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

EPA is authorized to commence a civil action pursuant to §107 of CERCLA, 42 U.S.C. §9607, to recover costs incurred by EPA at Superfund Sites. Nevertheless, EPA is, through this letter, extending to the individuals and corporations on the attached list, the opportunity to voluntarily pay the amount due prior to the commencement of any such action.

This option to reimburse EPA applies only to response costs which have already been incurred by EPA on matters relating to the above-referenced orders that were issued to the individuals and corporations on the above-referenced dates. Any offer or reimbursement by any or all of the individuals and/or corporations on the attached list to EPA for these costs is not intended to act, nor will it act, as a bar or a defense to, waiver of, or satisfaction of, any other claim or cause of action which EPA has at present or may have in the future relating to the SCP Site in Newark, New Jersey including penalties for non-compliance with the AO or the UO.

The documentation underlying EPA's claim to reimbursement may be examined by you and/or a representative of your corporation prior to reimbursing the EPA. Any modification(s) of the aforementioned deadline for reimbursement to the EPA must be approved in writing by the Office of Regional Counsel in EPA - Region II.

EPA would like to encourage good faith negotiations between you and the Agency and among you and the other individuals and corporations on the attached list. The names and addresses are included in the attachment to assist you in contacting other parties so that you may engage in meaningful discussions among yourselves regarding reimbursement of past costs and quickly organize yourselves into a single representative body to facilitate negotiations with the Agency.

Finally, the EPA has scheduled a meeting on August 2, 1989 in Room 305C, from 10 a.m. to 12 p.m., to discuss your reimbursement for past costs to the EPA and the collection of penalties for non-compliance with the above ACO and UO.

If you have any questions on this matter, please contact Virginia Curry, Esq. of the Office of Regional Counsel at (212) 264-2638.

Sincerely yours,

Steph D. Luftig

Stephen D. Luftig, Director
Emergency and Remedial Response Division

Attachment

RESOURCE APPLICATIONS, INC.
1000 Cambridge Square Ste. D
Alpharetta, GA 30201

July 21, 1989

BY TELECOPY AND OVERNIGHT DELIVERY

Michael Berman, Esq.
U.S. Environmental Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

BY OVERNIGHT DELIVERY

Steven Willey, Esq.
United States Department of Justice
Environmental Enforcement Section
Lands and Natural Resources Division
10th St. and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Fields Brook Superfund Site
Ashtabula, Ohio

Dear Counsellors:

The undersigned companies, RMI Company, Gulf + Western Inc., Detrex Corporation, Centerior Energy Corporation, and Occidental Chemical Corporation (successor to Hooker Electrochemical Corporation and Diamond Shamrock Chemical Company) (hereinafter "the Settling Companies") are hereby formally responding to the United States Environmental Protection Agency's ("U.S. EPA") letter dated June 20, 1989 to 44 addressees in which U.S. EPA demands payment of $969,282.49 jointly and severally from each PRP, allegedly for response costs incurred by U.S. EPA in connection with the Fields Brook Site (hereinafter "the Past Costs demand letter").

As you know, the Settling Companies have stepped forward and commenced the response actions at Fields Brook called for by U.S. EPA's unilateral administrative order pursuant to CERCLA §106 issued on March 22, 1989 (hereinafter "the §106 Order"). Thirteen other companies named as Respondents in the §106 Order have not undertaken the work required under the §106 Order and stand in violation of that order. Each of the non-complying §106 Order Respondents also was a recipient of the Past Costs demand letter.

As you also know, the Settling Companies met personally with U.S. EPA representatives in Chicago on July 10, 1989 to discuss the Past Costs demand letter, and had follow-up telephone conference calls on July 18 and 19, 1989. The United States Department of Justice ("U.S. DOJ") participated in the July 19 conference call.

This letter will not attempt to memorialize each proposal and responsive objection or suggestion. For present purposes, it suffices to note that in each of the above discussions, the Settling Companies presented proposals which would preserve the government's right to seek full recovery of its costs associated with the Fields Brook Site, while treating Settling Companies better than companies which stand in violation of U.S. EPA's §106 Order. Both U.S. EPA and U.S. DOJ agreed to consider these proposals, and it is our understanding that this process is continuing. Also, during our conference call of July 19, U.S. EPA explained that the reason the Settling Companies should execute an agreement to toll the statute of limitations is to avoid a lawsuit for Past Costs and U.S. EPA and U.S. DOJ asked that the Settling Companies prepare and submit such an agreement. In response, two alternatives are enclosed: a unilateral tolling arrangement and a bilateral tolling agreement based on the agreement U.S. DOJ used at the Yellow Water Road Superfund Site.

At the Yellow Water Road Site in Baldwin Florida, the Department of Justice executed a bilateral tolling agreement promising not to sue the settling generators for one year in return for a promise by the settling generators to toll the Statute of Limitations for the same period. This arrangement permitted - but did not legally require - the Department of Justice to sue the non-settling owners and operators for past costs arising out of a removal action. In fact, shortly after the tolling agreement was signed, the Department of Justice sued the non-settlers.

At Fields Brook, as at the Yellow Water Road Site, there are both settlers and non-settlers. At both sites, U.S. EPA has issued a demand for reimbursement of past costs incurred by the Agency and has referred the matter to U.S. DOJ for enforcement purposes. The Settling Companies believe that the government should take the position, as it has at Yellow Water Road, that settlers and non-settlers are different and should be treated differently. As the Department of Justice pointed out in the enclosed letter with respect to the Yellow Water Road Site:

> "However, because of the fruitful past course of negotiations in this case and the potential positive future outcome for further negotiations, it may be preferable to avoid litigation at this time on the Past Costs issue and toll any potentially applicable statute of limitations now."

Such an approach serves the dual goals of encouraging settlement and preserving the government's right to seek full recovery of its Past Costs.

Enclosed with this letter are the following documents:

1. The tolling agreement, prepared by U.S. DOJ for settlers at the Yellow Water Road Site, to enable U.S. DOJ to seek recovery of Past Costs first from non-settlers, along with U.S. DOJ's cover letter; and

2. Two alternative draft tolling agreements, one of which is patterned after the agreement which U.S. DOJ already has accepted at the Yellow Water Road Site.

The Settling Companies request the following from U.S. EPA and U.S. DOJ:

1. Formal responses to the two tolling arrangements proposed by the Settling Companies through this letter;

2. The issuance of a Past Costs demand letter to the Defense Plant Corporation identical to that issued to the Settling Companies. The federal government should also send a letter to the Settling Companies formally revising its demand for Past Costs so that the date on which interest begins to accrue for the Settling Companies is the same date on which interest on Past Costs begins to accrue for the Defense Plant Corporation and so that governmental and non-governmental recipients are treated alike with respect to the demand for Past Costs. This request is based in part on CERCLA Section 120(a) which provides: "Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under Section 107 of this Act."

3. An extension of the date on which interest will begin to accrue against the Settling Companies for Past Costs, pending a resolution of the parties' mutually expressed interest in devising an acceptable tolling arrangement;

4. Suggested dates for further negotiations with the Settling Companies to discuss the enclosed tolling proposals, and/or to discuss other resolutions for Past Costs.

The Settling Companies look forward to your prompt response.

Sincerely,

William W. Falsgraf
Counsel for RMI Company

Michael A. Cypher
Counsel for Gulf + Western Inc.

Robert A. Emmett
Counsel for Detrex Corporation

Elizabeth A. Tulman
Counsel for Occidental Chemical Corporation

David Whitehead
Counsel for Centerior Energy Corporation

cc: Mr. John Kelley
Arthur I. Harris, Esq.
Mr. Allen Wojtas
Mr. Victor Hyatt

U.S. Department of Justice

DTS:RDB
90-11-3-178

Washington, D.C. 20530

February 19, 1988

Charles H. Tisdale, Jr.
King & Spalding
2500 Trust Company Tower
Atlanta, Georgia 30303

Re: Yellow Water Road Site

Dear Chet:

Enclosed is a draft of an agreement to toll any possibly applicable statute of limitations that might apply to EPA's 1985 removal action at the Yellow Water Road site. It is the position of the United States that the CERCLA three year statute of limitations does not apply to this removal action, though we have not yet had court decisions on the issues involved and thus feel it is necessary, when possible, to file a cost recovery action within three years of the completion of a removal action, regardless of whether the removal was performed before the SARA amendments to CERCLA.

At this time we are preparing to file a cost recovery action for EPA's removal costs on March 8, 1988, that will include generators and site owners and operators. However, because of the fruitful past course of negotiations in this case and the potential positive future outcome for further negotiations, it may be preferable to avoid litigation at this time on the past costs issue and toll any potentially applicable statute of limitations now. I believe the draft agreement is self-explanatory and hopefully acceptable in its present form. We propose to toll any statute that might apply for a period of one year, with the assumption that by that time we will know the outcome of the RI/FS and who is performing the final remedy, and may be able to resolve the past costs issue at that point.

We are unable to give you any assurances that if a substantial number of generators sign the agreement, and the owners and operators do not, that we will then sue the owners and operators on March 8. That is a decision we will have to make once we see the participation in the agreement. Even if there is substantial participation in the agreement and we do not sue the owners and operators on March 8, we would certainly include the owners and operators in any future suit that we file concerning past costs. Even were we to file a suit only against the owners and operators on March 8, I am not sure that saves the generators from any litigation, as I assume that the defendants would name whatever generators they could in a third-party complaint.

Please discuss this issue with your group and circulate the agreement as soon as possible. We would like to know who the signatories are by March 1, if at all possible. I realize that the time-frames involved here are very short and make coordination difficult. I appreciate your cooperation and assistance on this matter and look forward to hearing from you. Please contact me at (202)633-3906 if you have questions or concerns.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Robert D. Brook, Attorney
Environmental Enforcement Section

Enclosure

AGREEMENT

This Agreement ("Agreement") is entered into this __ day of _____, 1988, between: 1) the United States of America ("Party 1"); and 2) _____ ("Party 2").

The undersigned representative of Party 2 certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind such party to this document.

Party 1 and Party 2, in consideration of the mutual covenants set out herein, agree as follows:

1. The United States contends that it presently has a cause of action against Party 2, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9607, in connection with the incurrence of costs by the United States regarding the Yellow Water Road site, a fourteen acre site located at 1190 Yellow Water Road, near the city of Baldwin, Florida. The United States presently intends to file a complaint against Party 2 on or before March 8, 1988 in the United States District Court for the Middle District of Florida.

2. This Agreement does not constitute in any way an admission of liability on the part of Party 2.

3. This Agreement does not constitute any admission or acknowledgement on the part of the United States as to any applicable statute of limitations under the above-cited statute or that any statute of limitations at all applies.

4. Party 2 agrees that the time between: March 8, 1988 and one year from that date, will not be included in computing the time limited by any statute of limitations under the cause of action referred to in paragraph one, hereof, if any statute of limitations is applicable. Nor will that time period be considered on a defense of laches or similar defense concerning timeliness of commencing a civil action. Party 2 shall not assert, plead or raise against Party 1 in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations, during the aforementioned period, and any statute of limitations shall be tolled during and for that period.

5. The United States agrees not institute any cause of action referred to in paragraph one hereof against Party 2 for a period of one year commencing on March 8, 1988, except that nothing herein shall preclude the commencement of any action necessary to protect the public health, welfare or environment.

. This instrument contains the entire agreement between the parties, and no statement, promise, or inducement made by either party or agent of either party that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed herein.

For the United States:

Roger J. Marzulla
Acting Assistant Attorney
General
Land and Natural Resources
Division
United States Department of
Justice

By: _____
Robert D. Brook, Attorney
Environmental Enforcement
Section
Land and Natural Resources
Division
United States Department of
Justice

For _____:

By: _____

ALTERNATIVE 1:

UNILATERAL TOLLING ARRANGEMENT

Settlers extend statute of limitations for three years, if government sues and executes first against nonsettlers.

TOLLING ARRANGEMENT

I

The undersigned companies, RMI Company, Gulf + Western Inc., Occidental Chemical Corporation (successor in interest to Hooker Electrochem. Corp. and Diamond Shamrock Chemical Co.), Detrex Corporation, and Centerior Energy Corporation (collectively "the Settling Companies") represent current and historical companies among the 40 entities previously identified by the United States Environmental Protection Agency ("U.S. EPA") as potentially responsible parties ("PRPs") at the Fields Brook Superfund Site, located in Ashtabula, Ohio ("the Site"). On March 22, 1989, U.S. EPA issued a unilateral administrative order (U.S. EPA Docket No. V-W-89-C-008) pursuant to § 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606, as amended, ("the § 106 Order"), directing nineteen Respondents to perform certain response actions at the Site. At this time, only the Settling Companies have commenced the response actions required under the § 106 Order.

II

By letter dated June 20, 1989 and directed to forty-eight addressees (including the Settling Companies), U.S. EPA demanded reimbursement for $969,282.49 of costs allegedly incurred by U.S. EPA with respect to the Site (hereinafter "Past Costs"). In order that the government of the United States, through its agents U.S. EPA and the Department of Justice, has an

opportunity to seek reimbursement of Past Costs from PRPs not in compliance with the § 106 Order before seeking reimbursement from those PRPs who are in compliance, the Settling Companies hereby unilaterally agree as follows:

III

Until this Tolling Arrangement expires in accordance with Paragraph V herein, the Settling Companies, both collectively and individually, agree not to plead or otherwise to interpose as a defense or avoidance to any claim which the United States now has to recover Past Costs under CERCLA § 107, the doctrine of laches or the expiration of the applicable statute of limitation in CERCLA § 113(g), so long as the United States first has sued for such Past Costs the Respondents to the § 106 Order who are not in compliance with said order and has reasonably attempted to execute upon any judgments obtained thereby.

IV

By executing this Tolling Arrangement, the Settling Companies do not admit or waive anything, including, without limitation, that any claim based in whole or in part on CERCLA, as amended, exists or is valid as a matter of law or of fact, or that the prerequisite to perfecting any claim under CERCLA, as amended, have been fulfilled.

V

Notwithstanding any other provision to the contrary, this Tolling Arrangement shall expire on the earlier of: (1) the filing of a claim on behalf of the United States seeking Past Costs from one or more Settling Companies if the United States

has not first sued the Respondents to the § 106 Order who are not in compliance with said order for such Past Costs and/or has not reasonably attempted to execute upon any judgments obtained thereby; or, (2) July 20, 1992.

VI

IN WITNESS WHEREOF, the undersigned Settling Companies have executed this Tolling Arrangement.

RMI Company,
also representing entities
described by U.S. EPA as USX
Corporation and RMI Corporation

Date

Centerior Energy Corporation

Date

Occidental Chemical Corporation,
also representing entities
described by U.S. EPA as
Diamond Shamrock Chemical Co.
and Hooker Electrochem. Corp.

Date

Gulf + Western Inc.,
also representing entities
described by U.S. EPA as
Gulf & Western Corp.,
Jersey Titanium Co. and
New Jersey Zinc Co.

Date

Detrex Corporation,
also representing entity
described by U.S. EPA as
Detrex Chemical Industries

Date

The undersigned acknowledge receipt of this Tolling Arrangement:

for the United States Environmental Protection Agency	for the United States Department of Justice
Date	Date

ALTERNATIVE 2:

BILATERAL TOLLING AGREEMENT

Settlers agree to extend statute of limitations for three years.

Government agrees not to sue settlers for three years.

Parties agree that settlers are never in a worse position than non-settlers because of this Agreement.

AGREEMENT

This Agreement ("Agreement") is entered into this ___ day of _____, 1989, between: (1) the United States of America ("Party 1"); and (2) _____ ("Party 2").

The undersigned representatives of Party 1 and Party 2 each certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind such party to this document.

Party 1 and Party 2, in consideration of the mutual covenants set out herein, agree as follows:

1. The United States contends that it presently has a cause of action against Party 2, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9607, in connection with the incurrence of costs by the United States regarding the Fields Brook Site, in Ashtabula, Ohio. The United States presently intends to file a complaint for recovery of costs incurred by the United States at the Fields Brook Site on or before July 21, 1992 in the United States District Court for the Northern District of Ohio. The costs to be sought by the United States do not exceed $969,282.49, exclusive of prejudgment interest and any enforcement costs expended to recover the response costs.

2. This Agreement does not constitute in any way an admission of liability on the part of Party 2.

3. This Agreement does not constitute any admission or acknowledgment on the part of either signing party as to any applicable statute of limitations under the above-cited statute or that any statute of limitations at all applies. Both parties reserve the right to assert that no statute of limitation applies.

4. Subject to the conditions expressed in paragraphs six and seven hereof, Party 2 agrees that the time between: July 21, 1989 and July 21, 1992, will not be included in computing the time limited by any statute of limitations under the cause of action referred to in paragraph one, hereof, if any statute of limitations is applicable. Nor will that time period be considered on a defense of laches or similar defense concerning timeliness of commencing a civil action. Party 2 shall not assert, plead or raise against Party 1 in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitation, during the aforementioned period, and any statute of limitations shall be tolled during and for that period. Party 2 does not waive its right to assert that the statute of limitations expired prior to July 21, 1989.

5. The United States agrees not to institute any cause of action referred to in paragraph one hereof against Party 2 prior to July 21, 1992, except that nothing herein shall preclude the commencement of any action necessary to protect the public health, welfare or environment.

6. In the event that the United States institutes a cause of action referred to in paragraph one hereof against Party 2 before the United States has prosecuted to judgment such cause of action against the Respondents who are not in compliance with the United States Environmental Protection Agency's March 22, 1989 unilateral Administrative Order in the matter of the Fields Brook Site, Ashtabula, Ohio (U.S. EPA Docket No. V-W-89-C-008) (hereinafter "the non-complying parties"), and has reasonably attempted to execute on any judgments obtained thereby, the parties agree that this Agreement shall not operate to preclude or restrict any defense, claim, or avoidance which Party 2 would have had in the absence of this Agreement.

7. In the event that the United States institutes a cause of action referred to in paragraph one hereof against Party 2 after the United States has prosecuted to judgment such cause of action against a non-complying party, and the non-complying party reduced or defeated liability based on a ground which this Agreement would otherwise preclude or restrict for Party 2, the parties agree that this Agreement shall not operate to preclude or restrict any such defense, claim, or avoidance which Party 2 would have had in the absence of this Agreement.

8. This instrument contains the entire agreement between the parties, and no statement, promise, or inducement made by either party or agent of either party that is not contained in this written contract shall be valid or binding; and

this contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed herein.

For the United States:

Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

By: _____
_____, Attorney
Environmental Enforcement Section
Land and Natural Resources Division
United States Department of Justice

For _____

By: _____